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MAY 06 2010

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR :
AGENCY ACTION OF ENERPLUS :
RESOURCES (USA) CORPORATION FOR AN :
ORDER TO FORCE POOL THE INTERESTS OF :
ALL OWNERS REFUSING OR FAILING TO :
AGREE TO LEASE THEIR INTEREST OR :
OTHERWISE BEAR THEIR PROPORTIONATE :
SHARE OF THE COSTS OF DRILLING AND :
PRODUCTION OPERATIONS OF THE LIVSEY :
25-15 WELL DRILLED IN SECTION 25, :
TOWNSHIP 2 SOUTH, RANGE 1 WEST, :
USM, UINTAH COUNTY, UTAH. :
:

**FINDINGS OF FACT,
CONCLUSION OF LAW
AND ORDER**

Docket No.: 2010-013

Cause No.: 131-128

This cause originally came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on March 24, 2010 in the Auditorium of the Utah Department of Natural Resources at 1594 West North Temple, Salt Lake City, Utah. The following board members were present and participated at the hearing: Douglas E. Johnson, Chairman, James T. Jensen, Ruland G. Gill, Jr., Jake Y. Harouny, Kelly L. Payne, Samuel C. Quigley and Jean Semborski. The Board and the Division were represented by Michael S. Johnson, Esq. and Fred Donaldson, Esq., Assistant Attorneys Generals, respectively. Testifying on behalf of the Petitioner Enerplus Resources (USA) Corporation ("Enerplus") were Jeff Schroeder, Landman with Enerplus and Matthew Smith, independent landman. Mark L. Burghardt, Esq., of Holme Roberts & Owen, appeared as attorney on behalf of Enerplus.

The Division, did not present any testimony or evidence and did not oppose the Request. No other statements were made at the hearing in opposition to the Request and no other parties appeared to participate at the hearing.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing held on March 24, 2010 (the "Hearing"), being fully advised, and for good cause appearing, by unanimous vote, hereby makes the following Findings of Fact, Conclusions of Law and Order (hereinafter the "Order").

FINDINGS OF FACT

1. The following Duchesne County lands, are the subject of the Request (the "Subject Lands"):

Township 2 South, Range 1 West, USM
Section 25: All

(containing 640 acres)

2. The Subject Lands were previously spaced under Cause No. 131-14, establishing 640-acres (or corresponding governmental section) drilling and spacing units for production of oil, gas and associated hydrocarbons for the Lower Green River/Wasatch Formations and amended by Cause No. 139-42, permitting 2 wells per drilling unit, among other well siting changes.

3. Enerplus is a Delaware corporation in good standing in the State of Utah. Enerplus is the contract operator of the Subject Lands and has drilled and completed the Livsey 25-15 Well (the "Well") in the Lower Green River Formation in the SW¹/₄SE¹/₄ of subject Section 25, Township 2 South, Range 1 West, USM.

4. The Board mailed notice of the hearing to all owners and interested parties for whom Enerplus could locate addresses on February 25, 2010.

5. Enerplus, pursuant to an Order of the Board granting its Motion to Serve Notice by Certified Mail and Publication, caused the Notice of Hearing to be published in the Deseret News, the Salt Lake Tribune and the Uintah Basin Standard for three consecutive weeks. In addition, on February 22, 2010, Enerplus mailed photocopies of the Request to the royalty, overriding royalty, working interest and other production and mineral interest owners and operators within the Subject Lands as disclosed by the appropriate federal, state, county and other records. Said mailing was by certified mail, return receipt requested. Enerplus made a diligent and reasonable effort to locate addresses for all Owners (as defined in Utah Code Ann. § 40-6-2) and interested parties.

6. The Subject Lands consist entirely of private (fee) lands. Subject Section 25 is owned by approximately 63 individual undivided mineral interest owners. As of the date of the Hearings, Enerplus or its co-working interest owners have leased approximately 94.592361% of the mineral interest owners in subject Section 34. The remaining 5.407639% have either refused to lease or are nonlocateable mineral interest owners (hereinafter collectively "Non-consenting Owners"). The Non-consenting Owners, and their respective net mineral acres, are:

Mineral Owner

Net Mineral Acres

Max D. Rasmussen

13.1958333

Slover Minerals, L.P.

10.2483096

| | |
|--------------------|-----------|
| Dusty Sanderson | 5.1256904 |
| C.D. LaSusa | 5.1226168 |
| Michael D. Pierson | 0.6000000 |
| Aaron D. Rasmussen | 0.2291667 |
| Deana Kay Sargeant | 0.0436364 |
| Nicole Massey | 0.0218182 |
| Julie Massey | 0.0218182 |

Total Unleased Acreage: 34.60889

Percent of Total Acreage: 5.407639%

The Non-Consenting Owners referred to in this paragraph are “nonconsenting owners” as that term is defined in the Utah Code Ann. Section 40-6-2(11) and as that term is utilized in Utah Code Ann. Section 40-6-6.5.

7. The cost to drill and complete the Well as of the date of the hearing was \$3,300,000.00. The Non-consenting Owners proportionate share of this cost is approximately \$178,452.00.

8. The estimated cost to plug and abandon the Well is \$117,690.00.

9. The weighted average royalty for the drilling unit for the Well is 16.63351%.

10. The AAPL Form 610-1982 Model Form Operating Agreement (“JOA”) contains provisions appropriate to govern the relationship between the operator and the

consenting and non-consenting Owners, including a 300% non-consent penalty. The JOA labeled exhibit “A” is attached to this Order and incorporated herein.

11. Due to the risk and high cost of drilling and completing the Well together with evidence showing that the industry standard support a non-consent penalty for a well of this nature of 300%, a 300% non-consent penalty is just, fair and appropriate for this well in the drilling unit comprising subject Section 25.

12. Forced pooling of the Non-consenting Owners’ interest in the drilling unit comprising all of subject Section 25 will promote the public interest, maximize ultimate recovery of hydrocarbon substances, prevent waste and protect the correlative rights of all owners.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place and purpose of the hearing was properly given to all interested parties in the form and manner as required by law and the rules and regulations of the Board and Division.

2. The Board has jurisdiction over all matters covered by the Request for Agency Action and all interested parties herein and has the power and authority to render the Order set forth herein pursuant to Utah Code Ann. § 40-6-6.5.

3. Enerplus properly served all owners and interested parties by (a) mailing copies of the request to such owners by certified mail, return receipt requested, and (b) publishing notice of the Hearings in this cause pursuant to R641-106-200 of the Utah Administrative Code.

4. There are no written agreements for the pooling of the Non-consenting Owners' interests in the drilling unit comprising subject Section 25.

5. Enerplus made a good faith effort to locate the Non-Consenting Owners, and provided the unlocatable and locatable Non-Consenting Owners with a good faith opportunity to lease or participate in the Well.

6. The risk and high cost of drilling and completing the Well together with the testimony concurring industry standards for non-consent penalties for a well of this kind, supports the imposition of a 300% non-consent penalty against the non-consenting owners as ordered herein.

7. The Request for Agency Action and the evidence presented at the hearing in this cause establishes forced pooling of the interests of the Non-consenting Owners in subject Section 25, is just and reasonable, promotes the public interest, will maximize ultimate recovery of hydrocarbon substances, will prevent waste of the hydrocarbon resource and protects the correlative rights of all owners.

Based upon the Request, the testimony and evidence submitted by Enerplus and the Division, and the Findings of Fact and Conclusions of Law stated above, the Board hereby orders:

ORDER

1. Enerplus' Request seeking forced pooling of the Non-consenting Owners' interests in the spaced interval in subject Section 25, Township 2 South, Range 1 West, USM, Duchesne County, Utah, is granted.

2. The Non-consenting Owners' interests hereby pooled are identified in Paragraph 8 above.

3. Drilling operations on any portion of the drilling and spacing unit comprising subject Section 25 shall be deemed for all purposes to be the conduct of the operations on each separately owned tract, if any, in the drilling and spacing unit.

4. Production allocated to a separately owned tract included in the drilling unit comprising Section 25 shall, when produced, be deemed for all purposes to have been production from that tract, irrespective of the location of the well within said drilling and spacing unit.

5. Each owner shall pay his allocated share of the costs incurred in drilling and operating the Well. Those costs include but are not limited to, the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities, reasonable charge for administration and supervision of operations and other costs customarily incurred in the industry.

6. Each Non-consenting Owners' interest in the Well shall be deemed relinquished to the consenting owners during the period of payout for such well, and any subsequent wells drilled in the spacing unit as provided in Utah Code Ann. § 40-6-6.5(4)(b) and (8).

7. A Non-consenting Owner shall be entitled to receive, subject to the royalty specified herein, the share of production of the Well applicable to his interest in the drilling unit after the consenting owners have recovered the following from the Non-consenting Owners' share of production:

- (a) 100% of the Non-consenting Owners' share of the cost of surface equipment beyond the well head connections including stock tanks, separators, treaters, pumping equipment, and piping;
- (b) 100% of the Non-consenting Owners' share of the estimated cost to plug and abandon the well, as determined by the Board;
- (c) 100% of the Non-consenting Owners' share of the cost of operation of the well commencing with the first production and continuing until the consenting owners have recovered all costs; and
- (d) 300% of the Non-consenting Owners' share of the costs of staking the location, well site preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing and completing, and the cost of equipment in the well to and including the well head connection, as provided in Utah Code Ann. § 40-6-6.5(4)(d)(i)(D). The Non-consenting Owners' share of costs is that interest that would have been chargeable to the Non-consenting Owner had he initially agreed to pay his share of his cost of the well from the commencement of operations.

8. During such payout period, Non-consenting Owners shall receive a royalty of 16.63351% which is the average land owner's royalty attributable to each tract within the subject drilling and spacing unit comprised of subject Section 25.

9. The interest rate as permitted by Utah Code Ann. § 40-6-6.5(4)(d)(iii) is set to prime plus 2% as set at Zions First National Bank.

10. In calculating the division of interest for each Non-consenting Owner, the average land owner's royalty shall be proportionately reduced in the ratio that the Non-consenting Owners' interest bears to (a) the total interest in the tract and (b) further reduced in the ratio that the tract acres bear to the total acreage in the drilling unit.

11. When the consenting owners have recovered from production the Non-consenting Owners' share of the costs of locating, drilling, completing and other costs as provided in Utah Code Ann. § 40-6-6.5(4)(d)(i)(D) together with the non-consent penalty to be determined by the Board in the subsequent hearing, the Non-consenting Owners' relinquished interest shall automatically revert to him, and the Non-consenting Owner shall from that time forward own the same interest in the well and the production from it, and shall be liable for further costs of operation, as if he had participated in the initial drilling and completion operations. Costs of operations after payout attributable to a Non-consenting Owner shall be paid out of production.

12. Under any circumstance where the Non-consenting Owner has relinquished his share of production to consenting owners or at any time fails to take his share of production in kind when he is entitled to do so, the Non-consenting Owner is entitled to an accounting of the oil and gas proceeds applicable to his relinquished share of production; and payment of the oil and gas proceeds applicable to that share of production not taken in kind, net of cost.

13. The terms and conditions of the JOA attached as Exhibit "B" hereto shall control the relationship of the parties as to all matters not expressly identified in this Order and to the extent not inconsistent with this Order. In the event any terms of the

JOA conflict with the terms of this Order or Utah Code Ann. § 40-6-6.5, the terms of this Order or the statute, as applicable, shall control.

14. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-201 *et seq.* of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Administrative Code R641.

15. This Findings of Fact, Conclusions of Law, and Order is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

16. The Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63G-4-301.

17. As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63G-4-302. The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Utah Code Ann. § 63-46b-13.

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled “Rehearing and Modification of Existing Orders” state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Utah Admin. Code R641-110-100.

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be

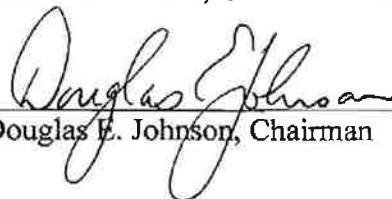
available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

18. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

19. The acting Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

Entered this 6 day of May, 2010.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



Douglas E. Johnson, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER for Docket No. 2010-013, Cause No. 131-128 to be mailed with postage prepaid, this 10th day of May, 2010, to the following:

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A handwritten signature in blue ink that reads "Julie Ann Carter". The signature is written in a cursive style and is positioned above a horizontal line.